

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

Education Code Sections 44237, 44332.6, 44346.1, 44830.1, 45122.1, 45125, 45125.1 as added or amended by Statutes of 1997, Chapters 588 and 589;

Filed on December 30, 1997;

By the Lake Tahoe Unified School District and Irvine Unified School District, Co-Claimants.

No. 97-TC- 16

Michelle Montoya School Safety Act

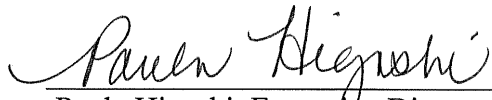
STATEMENT OF DECISION
PURSUANT TO GOVERNMENT
CODE SECTION 17500 ET SEQ.;
TITLE 2, CALIFORNIA CODE OF
REGULATIONS, DIVISION 2,
CHAPTER 2.5, ARTICLE 7

(Adopted on March 25, 1999)

STATEMENT OF DECISION.

The attached Statement of Decision of the Commission on State Mandates is hereby adopted in the above-entitled matter.

This Decision shall become effective on March 26, 1999.


Paula Higashi, Executive Director

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PROPOSED STATEMENT OF
DECISION PURSUANT TO
GOVERNMENT CODE SECTION
17500 ET SEQ.; TITLE 2,
CALIFORNIA CODE OF
REGULATIONS, DIVISION 2,
CHAPTER 2.5, ARTICLE 7

*(Presented for Adoption on
March 25, 1999)*

PROPOSED STATEMENT OF DECISION

This test claim was heard by the Commission on State Mandates (Commission) on February 25, 1999, during a regularly scheduled hearing. Dr. Sue Long appeared on behalf of Irvine Unified School District, Mr. Paul Minney appeared on behalf of Mandated Cost Systems, Incorporated, and Lake Tahoe Unified School District, Dr. Carol Berg appeared on behalf of Education Mandated Cost Network, Mr. Jim Cunningham appeared on behalf of San Diego Unified School District, and Mr. Jim Apps appeared for the Department of Finance.

The law applicable to the Commission's determination of a reimbursable state mandated program is Government Code section 17500 et seq., article XIII B, section 6 of the California Constitution and related case law.

The Commission, by a vote of 5 to 0, approved this test claim.

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BACKGROUND AND FINDINGS OF FACT

Issue: Does the test claim legislation, which requires new mandatory criminal background checks for certain employees in school districts, impose a reimbursable state mandated program upon local agencies under article XIII B, section 6 of the California Constitution and section 17514 of the Government Code²?

In order for a statute to impose a reimbursable state mandated program, the statutory language must direct or obligate an activity or task upon local governmental agencies. In addition, the required activity or task must be new, thus constituting a “new program”, or create an increased or “higher level of service” over the former required level of service. The court has defined a “new program” or “higher level of service” as a program that carries out the governmental function of providing services to the public, or a law, which to implement a state policy, imposes unique requirements on local agencies and does not apply generally to all residents and entities in the state. To determine if a required activity is new or imposes a higher level of service, a comparison must be made between the test claim legislation and the legal requirements in effect immediately prior to the enactment of the test claim legislation. Finally, the newly required activity or increased level of service must be state mandated.³

The test claim legislation, the Michelle Montoya School Safety Act⁴, requires school districts to obtain criminal background checks on specified employees and employees of entities that contract with school districts. The Commission recognized that obtaining criminal background checks on school district employees carries out a governmental function of providing a service to the public. Moreover, the Commission found that the

¹ Article XIII B, section 6 of the California Constitution provides the following: “Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local government for the costs of such program or increased level of service, except that the Legislature may, but need not, provide such subvention of funds for the following mandates: (a) Legislative mandates requested by the local agency affected; (b) Legislation defining a new crime or changing an existing definition of crime; or (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975. ”

² Government Code section 17514 provides the following: “ ‘Costs mandated by the state’ means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.”

³ *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 537; *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 66; *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835.

⁴ The test claim legislation was enacted as an urgency measure and became effective on September 30, 1997.

test claim legislation imposes unique requirements on school districts that do not apply generally to all residents and entities of the state. Thus the test claim legislation constituted a “program” within the meaning of article XIII B, section 6 of the California Constitution.’

The Commission continued its inquiry to determine if the activities required by the test claim legislation are new or impose a higher level of service.

Non-Certificated Employees

Prior to the enactment of the test claim legislation, Education Code section 45 125 required school districts to have applicants and/or employees in positions not requiring certification qualifications submit fingerprint cards to the Department of Justice for a criminal background check within 10 working days of the date of employment. The following employees and districts were *exempt* from this requirement: (1) substitute and temporary employees employed for less than the school year; (2) school districts with a common board, having an average daily attendance of 400,000 or greater; and (3) school districts wholly within a city and county.⁶

The test claim legislation amended Education Code section 45125 by requiring the governing board of every school district to obtain the fingerprints and criminal background checks of every employee applicant, except for secondary school pupils employed in a temporary part-time position at the school they attend, *prior to* hiring for a position not requiring certification qualifications.⁷ School districts hiring substitute and temporary employees, school districts having an average daily attendance of 400,000 or greater, and school districts wholly within a city and county are *no* longer *exempted* from the criminal background check requirement. Accordingly, the Commission found that this activity constituted a “new program” mandated by the state for those districts that were previously exempted.

⁵ The claimants included Education Code sections 44237 and 44346.1 in the test claim. Although both sections were included in the Michelle Montoya School Safety Act, the Commission found that they do not impose requirements on local school districts. Section 44237 imposes requirements on private schools. Section 44346.1 imposes requirements on the Commission on Teacher Credentialing.

⁶ Education Code section 45 125, as amended by Statutes of 1979, Chapter 668.

⁷ Education Code section 45125, subdivision (a), as amended by the test claim legislation, provides in relevant part the following: “The governing board of any school district shall require each person to be employed in a position not requiring certification qualifications, except a secondary school pupil employed in a temporary or part-time position by the governing board of the school district having jurisdiction over the school attended by the pupil, to have two. . . fingerprint cards. . . prepared by a local public law enforcement agency having any jurisdiction in the area of the school district, which agency shall transmit the cards, together with the [Department of Justice] fee. . . , to the Department of Justice. . . . ‘Local public law enforcement agency’ as used herein includes any school district. . . .”

Education Code section 45125, subdivision (c), as added by the test claim legislation, provides the following: “The governing board of a school district shall not employ a person until the Department of Justice completes its obligations as set forth in this section and Sections 45 124.5 and 4.5 126, except that this subdivision does not apply to pupils who are to be employed at the school they attend.”

The test claim legislation also requires the governing board of each district to forward a request to the Department of Justice indicating the number of current employees, except pupils that are employed at the school they attend, who have not completed the above criminal background check requirements within 30 days of the operative date of the test claim legislation.⁸ Additionally, by September 30th of each year, school districts are required to submit to the Department of Justice a list of all employees for the prior school year and were required to indicate whether or not a criminal background check has been completed on each employee.⁹ The Commission found that these activities are newly required and, thus, constitute reimbursable state mandated activities within the meaning of article XIII B, section 6.

Contract Employees

Prior to the enactment of the test claim legislation, employees of entities having service contracts with school districts were *not* required to submit fingerprints and have their criminal backgrounds checked.

The test claim legislation added section 45 125.1 to the Education Code. Section 45 125.1 now requires certain employees of entities having service contracts with school districts to submit fingerprint cards to the Department of Justice to determine if the person has been arrested or convicted of any crime. Employees of entities providing janitorial, administrative, landscape, transportation, and food-related services, and who have more than “limited” contact with the students, are subject to the test claim legislation. However, employees of an entity providing services to a school district in an emergency or in exceptional situations, such as when the student health or safety is endangered, or when repairs are needed to make school facilities safe and habitable, are *not* subject to the test claim requirements.

Subdivision (c) of section 45 125.1 requires school districts to determine if the employees of the entity will have “limited” contact with the students and, thus, not be subjected to the criminal background check. In making this determination, school districts are required to consider the length of time the contractors will be on school grounds, whether students will be in proximity of the site where the contractors will be working, and whether the contractors will be working by themselves or with others. In these cases, school districts are required to “take appropriate steps to protect the safety of any pupils that may come into contact with these employees. ”

⁸ Education Code section 45125, subdivision (d), as amended by the test claim legislation, provides in relevant part the following: “The governing board of each district shall forward a request to the Department of Justice indicating the number of current employees, except pupils employed at the school they attend, who have not completed the requirements of this section. The Department of Justice shall direct when the cards are to be forwarded to it for processing which in no event shall be later than 30 working days from the date of the amendment of this section.”

⁹ The test claim legislation added subdivision (h) to Education Code section 45125. Subdivision (h) provides the following: “The governing board of each school district shall annually on September 30 submit to the Department of Justice a list of all employees for the prior school year and shall indicate whether or not a criminal background check pursuant to this section has been completed on each employee. ”

In addition, subdivision (f) of section 45 125.1 requires the entity having a service contract to provide to the governing board of the school district a list of the names of its employees who may come into contact with the students and to certify in writing that none of its employees have been convicted of a felony. The governing board of the school district is then required to provide the list of employee names to the appropriate schools within its jurisdiction.

The Commission found that the above activities are newly required and, thus, constitute reimbursable state mandated activities within the meaning of article XIII B, section 6.

Certificated Employees

Prior to the enactment of the test claim legislation, a county or city and county board of education could issue temporary certificates for the purpose of authorizing salary payments to certificated employees whose credential applications were being processed by the Commission on Teacher Credentialing. A temporary certificate could be issued if the applicant or employee gave all the facts necessary to establish his identity and made a statement that he or she has not been convicted of a crime. The district could not employ a person who did not hold a certificate, credential or permit and the district was not required to obtain fingerprints or a criminal record summary prior to employment.¹⁰

The test claim legislation added section 44332.6 to the Education Code. Section 44332.6 requires county or city and county boards of education, and school districts, to obtain a criminal record summary about the applicant from the Department of Justice **before** issuing the temporary certificate. If the applicant had been convicted of a violent or serious felony (as defined in Penal Code sections 667.5 and 1192.7¹¹), then the county board of education or school district “shall not issue a temporary certificate” and employ the applicant.

The Commission found that the activities required by section 44332.6 are new and, thus, constitute reimbursable state mandated activities within the meaning of article XIII B, section 6.

Retaining Convicted Employees

Prior to the enactment of the test claim legislation, school districts were prohibited from employing or retaining in employment persons who have been convicted of a sex offense, a controlled substance offense, or determined to be a sexual psychopath.¹²

¹⁰ Education Code section 44332.

¹¹ Penal Code section 667.5 identifies 19 violent felonies including murder or voluntary manslaughter, mayhem, rape, sodomy, lewd acts on a child under age 14, any felony punishable by death or imprisonment for life, any felony in which the defendant inflicts great bodily harm, robbery, arson, attempted murder, kidnapping, continuous sexual abuse of a child, and carjacking.

Penal Code section 1192.7 identifies 28 serious felonies.

¹² Education Code sections 45 123 and 45 124

The Commission determined that the test claim legislation adds to the list of persons who cannot be employed or retained in employment by school districts.

Education Code section 44830.1 prohibits school districts from retaining any current certificated employee who has been convicted of a violent or serious felony (as defined in Penal Code sections 667 .5 and 1192 .7¹³) if the employee was a temporary, substitute or probationary employee serving before March 15 of the employee's second probationary year. Section 44830.1 also applies to persons committing out-of-state offenses if such offenses would have been punishable as a violent or serious felony in this state.

Furthermore, Education Code section 45 122.1 prohibits school districts from retaining any classified, or non-certificated, employee who has been convicted of a violent or serious felony (as defined in Penal Code sections 667.5 and 1192.7) if the employee is a temporary, substitute, or probationary employee who has not attained permanent status. Section 45 122.1 also applies to persons committing out-of-state offenses if such offenses would have been punishable as a violent or serious felony in this state.

In order to comply, sections 44830.1 and 45 122.1 require school districts, when notified by the Department of Justice by telephone that a temporary, substitute, or probationary employee had been convicted of a serious or violent felony, to immediately place the employee on leave without pay. When the school district receives written notification confirming the felony conviction from the Department of Justice, the school district is required to automatically terminate the employee. If the employee challenges the record of the Department of Justice causing the Department of Justice to withdraw in writing its notification to the school district, the school district is required to immediately reinstate, with full restoration of salary and benefits, the suspended employee upon receipt of the written withdrawal.

The Commission found that the activities required by sections 44830.1 and 45 122.1 constitute a new program or higher level of service and, thus, require reimbursement pursuant to article XIII B, section 6.

CONCLUSION

Based on the foregoing, the Commission concluded that the test claim legislation imposes a reimbursable state mandated program under article XIII B, section 6 of the California Constitution and Government Code section 175 14.

¹³ See fn. 10.